



MEMORANDUM

To: Mayor and Town Council

From: Jessica Plowgian, Chair of the Planning Commission

Date: November __, 2023

Re: DRAFT Planning Commission Recommendation on possible Tree Ordinance

OVERVIEW

On August 28, 2023, the Town Council indicated its desire to potentially adopt amendments to the Vienna Town Code to preserve and enhance the Town's overall tree canopy. The Town Council referred two versions of a proposed tree ordinance to the Planning Commission for consideration of amendments to Chapters 17, 18 and 27 of the Town Code related to the Tree Canopy and Preservation provisions authorized pursuant to §15.2-961 and §15.2-961.1 of the Code of Virginia.

On September 13th, the Planning Commission reviewed the proposals referred by the Town Council and heard presentations from Town staff, the Town Attorney and Christina Caplan, Chair of the Conservation and Sustainability Commission (CSC). We held a public hearing on the proposals on September 27th, and at that time we voted to extend the period to receive written public comments on these matters to October 10th. The Planning Commission finalized the recommendations contained herein at our meetings on October 11th and November 8th.

RECOMMENDATIONS

1. Tree Conservation Ordinance Pursuant to §15.2-961.1 of Virginia Code

After reviewing the public comments, memos from Town staff, and the October 2022 report entitled "Trees in Vienna: A Review of Programs to Help Vienna Preserve and Manage its Tree Canopy", the Planning Commission recommends that the Town adopt a conservation ordinance consistent with §15.2-961.1 of the Code of Virginia.

Planning Commissioners had extensive discussion about the possibility that the use of canopy credits under §15.2-961.1 might result in the tree canopy in 20 years being *less* under these requirements than what it would be under our current requirements which do not grant canopy credits for preserved trees. However, Planning Commissioners determined that, as a matter of policy, we value the current value of mature, existing trees and their immediate benefits to ecosystem, air quality, stormwater management and economic values in Town. We believe the benefits of adopting the provisions permitted by §15.2-961.1 that encourage the preservation of existing trees, outweigh concerns over the use of tree credits.

2. Structure of New Provisions

On matters of development standards, Planning Commissioners discussed whether the new requirements should remain within the recently adopted Chapter 18 of the Vienna Town Code¹ or be in a new chapter dedicated solely to trees (as is done in certain neighboring jurisdictions). Several Planning Commissioners voiced a desire to put the tree provisions in a new chapter to highlight the value attributed to maintaining the tree canopy and to make it easier for citizens to focus on measures being taken to address tree canopy loss. However, other Planning Commissioners raised concerns about whether removing these provisions from the existing development standards would make it harder for builders and property owners to ascertain all required development standards pertaining to a property. It was also noted that it is easier, administratively, to keep development standards together in one chapter.

Ultimately, Planning Commissioners support keeping development standards for trees within Chapter 18. Planning Commissioners noted that the Town should consider ways to highlight the importance of these provisions through the Town website, publications, and public outreach. The Town website should highlight the tree provisions in an accessible way for citizens.

The Planning Commission discussed whether to have the Director of Parks and Recreation administer the new requirements. After hearing from the Director of Planning and Zoning and the Director of Parks and Recreation, Planning Commissioners support maintaining the current structure, in which the two offices work together to administer these provisions. The proposed ordinance prepared by the Town Attorney codifies the involvement of the Director of Parks and Recreation in this process, but with the final decision by the Zoning Administrator. The Planning Commission supports this approach.

3. Recommended Changes to the Town Attorney's Draft Ordinance

As the Planning Commission determined that the new tree preservation requirements should remain in the zoning and subdivision ordinance in the newly adopted Chapter 18 of the Town Code, we used the Town Attorney's proposed draft as a basis for our comments.² However, our recommendation of several provisions from the other proposed ordinance are included below where indicated.

- **§17-15.1(b) Planting and Replacement of Trees:** The Town's current practice is to require any project that requires land disturbance of more than 2,500 square feet to meet tree canopy requirements. We recommend removing subsection (b) from the proposed ordinance as it would exclude certain types of land disturbing activities from the requirements of these provisions. It would reduce the categories of development projects for which there would be tree requirements as compared to current practice. The Town Attorney informed us that subsection (b) is not required by Virginia law.

¹ With the Town Council's adoption of the updated zoning and subdivision ordinance, Chapters 17 and 18 are now consolidated in a new Chapter 18.

² The citations in this memo refer to the draft language submitted by the Town Attorney as it related to Chapter 17 of the Town Code in place at the time it was referred to the Planning Commission. The newly adopted Town Code places "Minimum Tree Canopy Coverage" in sections associated with specific uses. So, our recommendations would be applied to §18-409, §18-462, §18-510 and §18-559 of the new code.

- §17-15.3(c) Tree Preservation Requirements: Include the following bolded language, which is in Sec. 29-3-3(c) of the alternative proposed ordinance referred to the Planning Commission, as well as from §15.2-961.1(E) of the Code of Virginia: “Deviations from the Tree Preservation Target shall be granted for any of the justifications listed above provided that a written request is submitted and approved by the Director of Planning and Zoning in consultation with the Director of Parks and Recreation. **The request shall take the form of a letter addressed to the Director of Planning and Zoning that provides a site-specific narrative explaining why one or more of the conditions allowing a deviation set forth herein should be considered. The narrative shall also provide the justification for the deviation, a description of how the deviation is the minimum necessary to afford relief, and describe how the balance of the 20-year tree canopy requirements could otherwise be met by means of tree planting or a tree fund.**”

[PC Members: I know we have asked Staff about their ability to fulfill the additional requirements under the new ordinance, but I recommend including the following to make sure TC is cognizant of the potential additional burden on Staff to keep in mind from a budgeting perspective.] We note that an applicant’s requirement to justify a deviation from the tree preservation requirement, which is required by §15.2-961.1, will create an additional burden on Town staff and we recommend that Town Council confirm that Town staff has sufficient resources to process such requests.

- §17-15.3(d) Tree Preservation Requirements (Optional Credits):
 - Planning Commissioners support both proposals’ inclusion of the optional credit from §15.2-961.1(l)(2)(a) of the Code of Virginia for “...the preservation of forest communities that provide valuable environmental, ecological, and wildlife conservation benefits.”
 - Planning Commissioners recommend that Town staff, with input from the Tree Board, evaluate whether to draft a heritage tree ordinance and offer a corresponding canopy credit for such trees as contemplated under §15.2-961.1(l)(2)(b) of the Code of Virginia.
- §17-15.4 Tree Planting Requirements (Optional Credits):
 - §17.15.4(b): Planning Commissioners recommend excluding this optional credit that would allow the use of tree seedlings for meeting tree canopy requirements in large open spaces, low-density residential settings or in low-impact development reforestation projects. The Town does not seem to have any sites where this usage would be desirable.
 - §17.15.4(e): Planning Commissioners recommend that Town staff, with input from the Tree Board, evaluate what trees the Town should identify as being ineligible for full tree canopy credits due to issues such as disease, pests, or other negative impacts on plant communities.
- §17-15.4(f) Tree Planting Requirements (Tree Inspections): Add the following provision to subsection (f), based on Sec. 29-4-2 of the alternate proposed ordinance: **[PC Members: At our last meeting we discussed the Town’s current tree inspection practice. The language**

below, included in the alternate proposed ordinance, appears to be the current practice. I propose to codify it in the Code or recommend that it be in the Tree Preservation and Planting Guide so that it is clear to builders and property owners. I asked Jeremy Edwards about this issue and he reviewed this language and recommended that it be codified in the ordinance, but he would also support it being in the manual.] “The planting of any new tree(s) specified on the tree conservation plan shall take place after the completion of construction. The Department of Parks and Recreation shall inspect the trees prior to planting and inspect the placement and installation of the tree(s). All products and workmanship related to the planting of the tree(s) shall be in accordance with the Town’s requirements as set for the in the Town of Vienna Tree Preservation and Planting Guide. The Department of Parks and Recreation shall also inspect all existing trees after completion of construction to determine what damage, if any, has been caused by the stress of construction. The Department of Parks and Recreation shall notify the permit holder in writing if any existing trees no longer qualify for canopy coverage. The letter shall state if mitigation measures are required to use a tree for canopy coverage. The permit holder shall provide an independent arborist’s report to justify retaining a damaged tree or to support mitigation measures. Upon notification by the Department of Parks and Recreation that repairs or replacements to an existing tree are to be made, the permit holder shall make the required repairs and replacements and shall notify the Department of Parks and Recreation when the repairs and replacement are complete. The Department of Parks and Recreation shall inspect the repairs and replacements and notify the owner when they have been satisfactorily performed.”

[PC Members: Please note that we have not discussed the use of a 12-month tree bond or the treatment of removal of off-site or jointly owned trees with “critical root zones” that fall outside a property, as included in the alternate proposal referred by Town Council. As no one has raised these items in our meetings, I have not included them in the memo. If you would like to discuss including them in the recommended legislation, please be prepared to discuss them at our meeting.]

- §17-15.5 Use of Tree Preservation and Planting Fund: The Planning Commission agrees with both proposals’ recommendations to utilize a tree fund to permit compensation by a builder not able to meet the tree requirements on site. Money in this fund will be held by the Town and shall be used to install and establish new trees on public property and/or be disbursed to community-based non-profit organizations specifically to install and establish new trees within the Town on private property. Some Planning Commissioners voiced a desire for Town staff to continue to investigate all possible uses of such funds, including whether a non-profit organization could plant the trees on private property (within the Town of Vienna).

4. Effective Date

After considering the feedback from Town Staff regarding the steps necessary to update the Tree Preservation and Planting Guide, the Planning Commission recommends that the effective date of this legislation be **[three to four months]** after adoption. We believe it is important to allow sufficient time for updating the Trees Preservation and Planting Guide, updating staff’s internal

administrative processes, and to ensure there is adequate outreach to builders, residents, and the community.

5. Tree Board

The Planning Commission recommends creating a Tree Board as a subcommittee to the Conservation and Sustainability Commission (CSC) within Chapter 27 of the Vienna Town Code. We recommend that this Board consist of seven (7) members to include **[two]** representatives from the CSC and one (1) representative from the Planning Commission, with the remaining **[four]** members being direct appointees by the Town Council. We suggest that **[Parks & Recreation staff]** be the liaison to the Tree Board. Planning Commissioners discussed their experiences serving on the Windover Heights Commission, which has a PC representative, and on the Bicycle Advisory Committee and Pedestrian Advisory Committee, which function as subcommittees to the Transportation Safety Commission. Planning Commissioners believe the newly formed Tree Board would benefit from the depth of expertise, resources, and guidance the CSC can offer. We believe this structure would not hinder the function or effectiveness of the Tree Board.

The Planning Commission recommends that the duties of the Tree Board be the following, as suggested by the Town Attorney with certain modifications suggested by the Director of Parks and Recreation: **[Note to PC members: I have included the Town Attorney version with all the Parks and Recreation Staff proposals except where noted]**

- 1) To promote and protect public health, safety and general community appearance by planning and recommending to the Town Arborist the planting, maintenance, and removal of trees, shrubs, and other plants on public property within the Town.
- 2) To assist Town staff with the creation of a tree management plan, **including the standards and specifications of care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas [PC members: Parks & Rec recommended removing the language in bold, but I would like to propose we retain it]**. Such plan will be reviewed annually, updated as necessary, and presented to the Town Council; upon acceptance and approval by the Town Council, such plan shall constitute the official public tree management plan of the Town
- 3) To recommend to the Town Council and to the appropriate municipal department directors the adoption of such rules, regulations, policies, and programs relating to tree conservation and management, the care and improvement of the Town's urban forest, and protecting and enhancing the Town's tree canopy including those necessary to implement and enforce the public tree management plan and related ordinances.
- 4) To undertake an ongoing program of public outreach and education to promote public understanding and support of the Town's public tree management plan and to increase public awareness of the value and benefits of a diversified sustainable community forest.
- 5) To occasionally attend as a Town representative and bring back knowledge and information from area, regional, and interagency meetings, seminars, summits, and conferences concerning urban forestry programs and policies.

- 6) To assist Town staff with compiling the annual Tree Report. Such information and statistics include (a) the amount spent each year by the Town for the purchase, installation and establishment of trees, (b) the number of trees planted on Town property each year, (c) the number of trees on Town property cut down or removed, (d) any available data regarding the extent of or changes to the Town's tree canopy and any available data regarding an inventory of the Town's street trees, such as the percentage of street tree planting sites that are filled, and priority street tree planting sites that are unfulfilled.
- 7) To present an annual Tree Report to the CSC for presentation to the Town Council that includes a description of the Tree Board's activities, key data and statistics compiled under subsection (6) above, and ongoing and anticipated future activities. This information and report shall be published each year, including on the Town website.

6. Requirement to Produce an Annual Report on the Tree Canopy

The Planning Commission recommends that the Town establish a requirement to produce an annual Tree Report on the state of tree management in the Town each year. This report is referenced above in Item 6 of the duties of the Tree Board.

The Planning Commission also recommends that the Town conduct a report on the state of the tree canopy of the Town every five (5) years. Planning Commissioners noted that it is extremely important for the Town to monitor the impact of these legislative changes to ascertain whether they are having the intended effect and to monitor any unintended consequences. Planning Commissioners also advocated for a focus by the Town on evaluating whether the tree canopy required of property owners is being achieved at the 20-year mark.

7. Other Items:

[The Department of Parks and Recreation asked for guidance on whether the Town should continue to require a special request for the inclusion in canopy coverage of co-owned trees. The Planning Commission notes that §15.2-961.1(K) indicates that canopy credits will only be given to trees "with trunks that are fully located on the development site", so we recommend consultation with the Town Attorney about this issue.]

PC Action

The Planning Commission made a motion to approve this recommendation letter to the Town Council.

Motion:

2nd:

Roll Call Vote: